

STATE GOVERNMENT (71 PA.C.S.) - OMNIBUS AMENDMENTS

Act of Oct. 29, 2020, P.L. 775, No. 94

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No. 2020-94

HB 1961

AN ACT

Amending Title 71 (State Government) of the Pennsylvania Consolidated Statutes, in State Employees' Defined Contribution Plan, further providing for individual investment accounts, for participant contributions, for employer defined contributions, for vesting, for powers and duties of board, for investments based on participant's investment allocation choices and for expenses; in administration, funds, accounts and general provisions, further providing for administrative duties of the board and for taxation, attachment and assignment of funds; and making a related repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 5803, 5804(c), 5806(c), 5809(a) and (b), 5812(2), 5814(b) and 5815 of Title 71 of the Pennsylvania Consolidated Statutes are amended to read:

§ 5803. Individual investment accounts.

The board shall establish in the trust an individual investment account for each participant in the plan. All contributions by a participant or an employer for or on behalf of a participant shall be credited to the participant's individual investment account, together with all interest and investment earnings and losses. Investment and administrative fees, costs and expenses shall be charged to the participants' individual investment accounts except as otherwise provided under this part or as the General Assembly otherwise provides by appropriations from the General Fund. Employer defined contributions shall be recorded and accounted for separately from participant contributions, but all interest, investment earnings and losses, and investment and administrative fees, costs and expenses **charged against individual investment accounts** shall be allocated proportionately.

§ 5804. Participant contributions.

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(c) Prohibited contributions.--No contributions may be allowed that would cause a violation of the limitations related to contributions applicable to governmental plans contained in IRC § 415 or in other provisions of law. In the event that any disallowed contributions are made, any participant contributions in excess of the limitations and investment earnings on those contributions, but minus investment fees and administrative charges **applied against those contributions**, shall be refunded to the participant by the board.

§ 5806. Employer defined contributions.

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(c) Limitations on contributions.--No contributions may be allowed that would cause a violation of the limitations related to contributions applicable to governmental plans contained in IRC § 415 or in other provisions of law. In the event that any disallowed contributions are made, any employer defined contributions in excess of the limitations and investment

earnings on the contributions, but minus investment fees and administrative charges **applied against those contributions**, shall be refunded to the employer by the board.

§ 5809. Vesting.

(a) Participant and voluntary contributions.--Subject to the forfeiture and attachment provisions of section 5953 (relating to taxation, attachment and assignment of funds) or otherwise as provided by law, a participant shall be vested immediately with respect to all mandatory pickup participant contributions and voluntary contributions paid by or on behalf of the participant to the trust in addition to interest and investment gains or losses on the participant contributions but minus investment fees and administrative charges **applied against those contributions**.

(b) Employer defined contributions.--

(1) Subject to the forfeiture and attachment provisions of section 5953 or otherwise as provided by law, a participant shall be vested with respect to all employer defined contributions paid to the participant's individual investment account in the trust in addition to interest and investment gains and losses on the employer defined contributions but minus investment fees and administrative charges **applied against those contributions** according to the following schedule:

(i) Until such time as a participant has earned three eligibility points as a member of the system or participant in the plan, 0%;

(ii) At and after the attainment of three eligibility points as a member of the system or participant in the plan, 100%.

(2) For purposes of this subsection, all eligibility points credited to a member of the system in any class of service shall be used for determining vested status in the plan even if the employee was not a participant in the plan at the time the eligibility points were earned.

(3) Nonvested employer defined contributions and the interest and investment gains and losses on the nonvested employer defined contributions that are forfeited when a participant terminates State service before accruing three eligibility points as provided under section 5307(c)(3) (relating to eligibility points) [are credited to the participant's most recent employer's future obligation assessed under section 5509 (relating to appropriations and assessments by the Commonwealth).] **shall be retained by the board and used for the payment of the administrative fees, costs and expenses of the plan.**

* * *

§ 5812. Powers and duties of board.

The board, in addition to its powers and duties set forth in Chapter 59 (relating to administration, funds, accounts, general provisions), shall have the following powers and duties to establish the plan and trust and administer the provisions of this chapter and part:

* * *

(2) The board shall pay all administrative fees, costs and expenses of managing, investing and administering the plan, the trust and the individual investment accounts from the balance of such individual investment accounts except as otherwise provided under this part or as the General Assembly otherwise provides by appropriations from the General Fund. **The board may assess, and each employer shall**

pay, an annual per-participant charge for the payment of administrative fees, costs and expenses under this paragraph.

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§ 5814. Investments based on participant's investment allocation choices.

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(b) Investment of contributions made by entities other than the Commonwealth.--Investment of contributions by any corporation, institution, insurance company, custodial bank or other entity that the board has approved shall not be unreasonably delayed, and in no case may the investment of contributions be delayed more than 30 days from the date of payroll deduction or the date voluntary contributions are made to the date that funds are invested. Any interest earned on the funds pending investment shall be used to pay administrative [costs and fees that would otherwise be required to be borne by participants who are then participating in the plan or paid by appropriations from the General Fund] **fees, costs and expenses of the plan.**

§ 5815. Expenses.

All fees, costs and expenses of establishing and administering the plan and the trust and investing the assets of the trust shall be borne by the participants and paid from assessments against the balances of the individual investment accounts as established by the board, except that the fees, costs and expenses of establishing and administering the plan and the trust **that are not paid under sections 5809 (relating to vesting), 5812(2) (relating to powers and duties of board), 5814(b) (relating to investments based on participant's investment allocation choices) and 5953(a)(2)(ii) (relating to taxation, attachment and assignment of funds)** shall be paid by the Commonwealth through annual appropriations.

Section 2. Section 5902(c)(3) of Title 71 is amended and the section is amended by adding a subsection to read:

§ 5902. Administrative duties of the board.

* * *

(c) Expenses.--

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(3) For fiscal years ending on or before June 30, 2020, and for any additional fiscal years as the General Assembly may provide, such expenses of the plan as approved by the General Assembly in an appropriation bill shall be paid from the General Fund. For fiscal years beginning on or after July 1, 2020, such expenses of the plan as approved by the General Assembly **that are not paid under sections 5809 (relating to vesting), 5812(2) (relating to powers and duties of board), 5814(b) (relating to investments based on participant's investment allocation choices) and 5953(a)(2)(ii) (relating to taxation, attachment and assignment of funds)** shall be paid [from interest under section 5814(b) (relating to investments based on participant's investment allocation choices) or assessments on the balances of the participants' individual investment accounts or] as otherwise provided in this part except as the General Assembly otherwise provides by appropriations from the General Fund.

* * *

(r) **Additional report on investment performance.--In addition to any other report required to be made by the board under this part, the board shall prepare a separate report of**

the investment performance of the State Employees' Retirement System for the period of July 1 through June 30 of each year.

Section 3. Section 5953(a)(2)(ii) of Title 71 is amended to read:

§ 5953. Taxation, attachment and assignment of funds.

(a) General rule.--

* * *

(2) * * *

(ii) In accordance with section 16(b) of Article V of the Constitution of Pennsylvania and notwithstanding this paragraph, the Public Employee Pension Forfeiture Act, or 42 Pa.C.S. § 3352 (relating to pension rights), the accumulated mandatory participant contributions and accumulated voluntary contributions standing to the credit of a participant shall not be forfeited but shall be available for payment of fines and restitution as provided by law. In accordance with section 16(b) of Article V of the Constitution of Pennsylvania, amounts in the trust that have been ordered to be distributed to an alternate payee as the result of an equitable distribution of marital property as part of an approved domestic relations order entered before the date of the order or action in a court or other tribunal resulting in a forfeiture of a participant's interest in the trust shall not be subject to the provisions of the Public Employee Pension Forfeiture Act or 42 Pa.C.S. § 3352. Any accumulated employer defined contributions forfeited as a result of this paragraph or other law shall be retained by the board and notwithstanding sections 5812(2) (relating to powers and duties of board), 5815 (relating to expenses) and 5902(c) (relating to administrative duties of the board) used for the payment of **administrative fees, costs and expenses** of the plan.

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Section 4. The following shall apply:

(1) The amendment of 71 Pa.C.S. §§ 5803, 5804(c), 5806(c), 5809(a) and (b), 5812(2), 5814(b), 5815, 5902(c)(3) and 5953(a)(2)(ii):

(i) shall not be construed to mean that a method of funding or paying the administrative fees, costs and expenses of the State Employees' Defined Contribution Plan was not in accordance with the provisions of 71 Pa.C.S. Pt. XXV, other applicable law or any trust or plan document established under 71 Pa.C.S. Pt. XXV prior to the effective date of this section; and

(ii) in relation to the requirements for providing for the funding or payment of the administrative fees, costs and expenses of the State Employees' Defined Contribution Plan, any construction of 71 Pa.C.S. Pt. XXV as amended by the amendment of sections 5803, 5804(c), 5806(c), 5809(a) and (b), 5812(2), 5814(b), 5815, 5902(c)(3), 5953(a)(2)(ii) or any rule, regulation, trust or plan document adopted or established under 71 Pa.C.S. Pt. XXV, shall not create in any participant of the State Employees' Defined Contribution Plan or in any other person claiming an interest in the account of any participant a contractual right, either express or implied, in method or amount of funding or payment of the fees, costs and expenses of the State Employees' Defined Contribution Plan.

(2) The amendment of 71 Pa.C.S. § 5809(b)(3) shall only apply to forfeitures after June 30, 2020.

(3) The addition of 71 Pa.C.S. § 5902(r) shall apply beginning with the first period of July 1 through June 30 that commences after the effective date of this section.
Section 5. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the amendment of 71 Pa.C.S. §§ 5803, 5804(c), 5806(c), 5812(2), 5814(b), 5815, 5902(c)(3) and 5953(a)(2)(ii).

(2) Section 1748-E of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, is repealed.

Section 6. This act shall take effect as follows:

(1) The addition of 71 Pa.C.S. § 5902(r) shall take effect in 30 days.

(2) The remainder of this act shall take effect immediately.

APPROVED--The 29th day of October, A.D. 2020.

TOM WOLF